Chapter 17: Permanency Planning Hearings

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In this chapter. . .

This chapter discusses permanency planning hearings. The purpose of permanency planning hearings is to review and finalize a permanency plan for a child in foster care. A court must hold a permanency planning hearing no later than 12 months after a child was removed from his or her home. In cases of serious abuse or if a parent has had his or her parental rights to another child terminated, the Department of Human Services (DHS) must file a petition in court. See Section 2.22. In such cases, the court must hold a permanency planning hearing no later than 30 days after it finds that "reasonable efforts" to reunify the family are not required. The court's options following a permanency planning hearing are set forth in Sections 17.1 and 17.5. For a description of all permanency options, see DHS *Services Manual,* CFF 722-7. Federal law and regulation require the agency to file or join in filing a petition requesting termination of parental rights in certain circumstances. See Section 17.6.

17.1 Purpose of Permanency Planning Hearings

Permanency planning hearings are conducted to review the progress being made toward returning home a child in foster care, or to show why the child should not be made a permanent court ward. MCL 712A.19a(3).

Permanency options. A court must also make certain findings regarding the permanency plan following a permanency planning hearing. MCR 3.976(A) lists those findings as follows:

> "(A) *Permanency Plan.* At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

> (1) the child may be returned to the parent, guardian, or legal custodian;
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> (2) a petition to terminate parental rights should be filed;
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> (3) the child may be placed in a legal guardianship;*
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> (4) the child may be permanently placed with a fit and willing relative;* or
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> (5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)-(4).'"*

*See Section 13.9(D).

*See Section 13.9(C).

*See Section 17.5, below, for further discussion of the court's options following a permanency planning hearing and the "compelling reason" requirement.

The court rule quoted above is based on a federal regulation implementing the Adoption & Safe Families Act. The regulation, 45 CFR 1355.20(a), defines "permanency hearing" as follows:

> "Permanency hearing means:
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> "(1) The hearing required by [42 USC 675(5)(C)] to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:
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> (*i*) Returned to the parent;
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> (*ii*) Placed for adoption, with the State filing a petition for termination of parental rights;
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> (*iii*) Referred for legal guardianship;
>
> (*iv*) Placed permanently with a fit and willing relative; or
>
> (*v*) Placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above."

17.2 Requirements of the Child's Supervising Agency

Permanent placement for child. A child's supervising agency must strive to achieve a permanent placement for the child, including either a safe return to the child's home or implementation of an alternative permanency plan, within 12 months after the child is removed from his or her home. This 12-month goal shall not be extended or delayed for reasons such as a change or transfer of staff or worker at the supervising agency. MCL 722.954b(1).

The child's supervising agency must require its worker to visit at least monthly the home or facility in which the child is placed, and to monitor and assess in-home visitation between the child and his or her parents. MCL 722.954b(3).

"Supervising agency" means the Department of Human Services (DHS) if the child is placed in the DHS's care for foster care, or a child placing agency in whose care a child is placed for foster care. MCL 722.952(l).

Requirements to maintain eligibility for Title IV-E funding. MCR 3.976(A) states that "[a]t or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan." This requirement is based on federal law and regulation and is a prerequisite to maintaining* a child's eligibility for federal reimbursement of foster care expenses. The relevant federal regulation, 45 CFR 1356.21(b), states as follows:

*See Sections 3.2, 8.10, and 14.1 for required findings to establish Title IV-E eligibility.

> "(b) *Reasonable efforts.* The State must make reasonable efforts . . . to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the 'reasonable efforts' requirements of [42 USC 671(a)(15)] (as implemented through [42 USC 672(a)(1)]), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.
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> * * *
>
> "(2) *Judicial determination of reasonable efforts to finalize a permanency plan.*

*A child enters foster care on the earlier of the date that the court found a child to be abused or neglected or the date of the child's actual removal from his or her home. 45 CFR 1355.20(a).

(*i*) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part,* and at least once every twelve months thereafter while the child is in foster care.

(*ii*) *If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.*

*The circumstances listed below may require the DHS to file a petition requesting termination of parental rights at the initial disposition hearing. See Section 2.22.

"(3) *Circumstances in which reasonable efforts are not required . . . to reunify the child and family.* Reasonable efforts to . . . reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:*

(*i*) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(*ii*) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

> (C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or
>
> (D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,
>
> (*iii*) The parental rights of the parent with respect to a sibling have been terminated involuntarily.
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> "(4) Concurrent planning. Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.
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> "(5) Use of the Federal Parent Locator Service. The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan." (Emphasis added.)

As with other findings required to establish a child's eligibility for federal foster care maintenance payments, the federal regulations implementing the Adoption & Safe Families Act require documentation of the finding described above. 45 CFR 1356.21(d) states:

> "(d) *Documentation of judicial determinations.* The judicial determinations regarding . . . reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.
>
> (1) If the reasonable efforts . . . judicial determination[is] not included as required in the court orders identified in paragraph[] (b) . . . of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that [this] required determination[has] been made.
>
> (2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts . . . judicial determinations.
>
> (3) Court orders that reference State law to substantiate judicial determinations are not acceptable . . . ."

17.3 Time Requirements

Court rule requirements. In most cases, a court must hold a permanency planning hearing within one year after an original petition was filed. Where a parent has previously had parental rights to a child terminated, or in very serious cases of child abuse, a court must conduct a permanency planning hearing with 28 days after a petition has been adjudicated. MCR 3.976(B) contains the time requirements for permanency planning hearings. That rule states:

> **"(B) Time.**
>
> "(1) An initial permanency planning hearing must be held within 28 days after a petition has been adjudicated and both of the following occur:
>
> (a) A court of competent jurisdiction has determined that*
>
> (i) a parent is found to have abused the child, or a sibling of the child, and the abuse included one or more of the circumstances in MCL 712A.19a(2), or
>
> (ii) the parent's rights to another child were terminated involuntarily, and
>
> (b) the court has determined that reasonable efforts are not required to reunify the child and the family.
>
> "(2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than one year after an original petition has been filed. The hearing must not be extended or delayed for reasons such as a change or transfer of staff or workers at the supervising agency.
>
> "(3) *Requirement of Annual Permanency Planning Hearings*. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing."

*The circumstances listed below may require the DHS to file a petition requesting termination of parental rights at the initial disposition hearing. See Section 2.22.

Statutory requirements.* Except as provided in MCL 712A.19a(2), a permanency planning hearing must be held within 12 months after the child was removed from his or her home. MCL 712A.19a(1) and MCL 712A.19c(1). A permanency planning hearing shall not be canceled or delayed beyond 12 months, regardless of whether there is a petition for termination of parental rights or any other matter pending. *Id.*

*These requirements are effective December 28, 2004. 2004 PA 476.

Circumstances requiring a permanency planning hearing within 28 days after adjudication. MCR 3.976(B)(1) requires a court to conduct a permanency planning hearing within 28 days after a petition has been adjudicated if the parent's rights to another child were terminated involuntarily, or if a parent has been found to have abused a child or a child's sibling and the abuse included one or more of the circumstances listed in MCL 712A.19a(2). MCL 712A.19a(2) states:

> "(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:
>
> (a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.*
>
> (b) The parent has been convicted of 1 or more of the following:
>
> (*i*) Murder of another child of the parent.
>
> (*ii*) Voluntary manslaughter of another child of the parent.
>
> (*iii*) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.
>
> (*iv*) A felony assault that results in serious bodily injury to the child or another child of the parent.
>
> (c) The parent has had rights to the child's siblings involuntarily terminated."

*See Section 2.22 for a discussion of these statutory provisions.

*As amended by 2004 PA 477, effective December 28, 2004.

Review hearings following a permanency planning hearing. Except as explained in the next paragraph, the court must conduct a review hearing not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home, the court must hold a review hearing not more than 182 days from the immediately preceding review hearing and no later than 182 days from each preceding review hearing thereafter until the case is dismissed. MCL 712A.19(3).*

*As amended by 2004 PA 477, effective December 28, 2004.

If a child is under the care and supervision of an agency and is in a "permanent foster family agreement" or is placed with a relative in a placement intended to be permanent, the court must hold review hearings not more than 182 days after the child has been removed from his or her home and no later than every 182 days thereafter, as long as the child remains subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency. MCL 712A.19(4).*

A review hearing shall not be canceled or delayed beyond the 182 days, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(3)–(4).

*As amended by 2004 PA 473, 476, effective December 28, 2004.

Subsequent permanency planning hearings. As long as a child is in foster care, subsequent permanency planning hearings must be held no later than 12 months after each preceding permanency planning hearing. MCL 712A.19a(1) and MCL 712A.19c(1). A permanency planning hearing shall not be canceled or delayed beyond 12 months, or beyond 30 days if the court has determined that efforts to reunite the child and family are not required, regardless of whether there is a petition for termination of parental rights or any other matter pending. *Id.**

Combined permanency planning and review hearings. A permanency planning hearing may be combined with a dispositional review hearing if proper notice of the permanency planning hearing is provided and the court adheres to the time lines for permanency planning and review hearings. MCL 712A.19a(1) and MCL 712A.19c(1).

Federal law requirements. Federal regulations implementing the Adoption & Safe Families Act require that states conduct "permanency hearings" in 12-month intervals. 45 CFR 1355.34(c)(2)(*iii*) states that such permanency planning hearings must occur

> ". . . in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the State agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) . . . ."

Another regulation, 45 CFR 1355.20(a), states in relevant part as follows:

> "(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. . . ."

A child enters foster care the earlier of the date that the court found the child to be abused or neglected or 60 days after the child was removed from his or her home. 45 CFR 1355.20(a).

When a child has been subject to "aggravated circumstances" and "reasonable efforts" to reunify the family are not required, a permanency planning hearing must be held within 30 days. 45 CFR 1356.21(h)(2) states as follows:

> "(2) In accordance with paragraph (b)(3) of this section,* when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required."

*See Section 17.2, above, for a quotation of paragraph (b)(3). The circumstances requiring a "permanency hearing" within 30 days are substantially similar to the circumstances listed in MCL 712A.19a, quoted above.

17.4 Required Procedures and Rules of Evidence at Permanency Planning Hearings

Required procedures. MCR 3.976(D)(1) states:

> "(1) *Procedure.* Each permanency planning hearing must be conducted by a judge or a referee. Paper reviews, ex parte hearings, stipulated orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated; (b) the child, if of appropriate age; and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings."

This court rule is based on language from a federal regulation implementing the Adoption & Safe Families Act. The regulation, 45 CFR 1355.20(a), states in relevant part:

> "The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings."

Rules of evidence. MCR 3.976(D)(2) sets forth the rules of evidence applicable to permanency planning hearings. That rule states:

> "(2) *Evidence.* The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The parties must be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available."

See also MCL 712A.19a(8), which contains substantially similar language.

17.5 Court's Options Following Permanency Planning Hearings

First decision: determine whether to return child home. MCL 712A.19a(5) sets forth the standard to determine whether a child should be returned home from foster care and evidentiary considerations to assist in making this decision. That statutory provision states:

> "If parental rights to the child have not been terminated and the court determines at a permanency planning hearing that the return of the child to his or her parent would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parent. In determining whether the return of the child would cause

> a substantial risk of harm to the child, the court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan prepared under section 18f of this chapter as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition to considering conduct of the parent as evidence of substantial risk of harm, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being."

MCR 3.976(E)(1) contains substantially similar language. The court rule states:

> "(1) *Determining Whether to Return Child Home.* At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child. Failure to substantially comply with the case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being."

Both the statute and court rule state that a parent's failure to substantially comply with the Case Service Plan is evidence that a substantial risk of harm to a child's life, physical health, or mental well-being exists. In *In re JK,* 468 Mich 202 (2003), the Michigan Supreme Court held that where the respondent-mother fulfilled every requirement of a parent-agency agreement, termination of her parental rights pursuant to MCL 712A.19b(3)(g) was improper. The Court stated the following:

> "The respondent in this case fulfilled every requirement of the parent-agency agreement. Her compliance negated any statutory basis for termination.

*In *Trejo Minors,* the trial court made the parent-agency agreement part of its disposition order. A court must do so in order for it to bind a parent. See Section 13.7.

> "This Court has held that a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child. [*In re Trejo Minors,* 462 Mich 341, 360–63 (2000)*]. By the same token, the parent's *compliance* with the parent-agency agreement is evidence of her ability to provide proper care and custody.[20]

> "[20] If the agency has drafted an agreement with terms so vague that the parent remains 'unfit,' even on successful completion, then the agreement's inadequacies are properly attributable to the agency and cannot form the basis for the termination of parental rights. Even if, in some case, it can be conceived that satisfaction by the parent of the parent-agency agreement does not render the parent 'fit,' in this case we are satisfied that the respondent's satisfaction of the agreement did evidence that she was no longer an 'unfit' parent." *JK, supra* at 214.

In *In re Mason,* 140 Mich App 734, 737–38 (1985), the Court of Appeals reversed the trial court's order terminating parental rights and stated the following regarding a parent's compliance with a treatment plan:

> "A parent's failure to fully comply with a Department of Social Services [now Department of Human Services] treatment plan does not alone establish neglect, at least in the absence of clear and convincing evidence that the treatment plan was necessary to improve the parent's alleged neglectful behavior. See [*In re Moore,* 134 Mich App 586, 598 (1984)]. As to respondent's failure to regularly attend parenting classes, there was no clear and convincing evidence that the classes in which respondent was enrolled would have aided her in caring for the minor child. With regard to the visitation sessions, it appears from the evidence that respondent's failures in keeping visitation appointments were essentially due to circumstances beyond her control rather than to wilful failure on her part to keep the appointments. Furthermore, as to the counseling sessions, the evidence shows that respondent did regularly attend and invest in therapy sessions and, at least in her opinion, was benefiting from them. We believe the evidence establishes that respondent did make a legitimate effort to comply with the treatment program and to improve her

> ability to care for the child. Her shortcomings were due primarily to ignorance and circumstances beyond her control rather than to wilful neglect."

In *In re Gazella*, 264 Mich App 668, 676 (2005), the Court explored the distinction between "physical compliance" with the Case Service Plan and improvement in parenting ability. The Court stated:

> "'Compliance' could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes but learning nothing from them and, therefore, not changing one's harmful parenting behaviors is of no benefit to the parent or child.
>
> "It could be argued that a parent complied with a case service plan which merely required attending parenting classes but was silent as to the need for the parent to benefit from them. It is our opinion that such an interpretation would violate common sense and the spirit of the juvenile code, which is to protect children and rehabilitate parents whenever possible so that the parents will be able to provide a home for their children which is free of neglect or abuse."

See also *In re Draper,* 150 Mich App 789, 800–01 (1986), vacated in part on other grounds 428 Mich 851 (1987) (parent's failure to attend counseling sessions was due to circumstances beyond his control, and unless parenting classes are "actually needed to improve [a parent's] neglectful behavior," failure to attend them does not alone establish grounds for terminating parental rights), and *In re Miller,* 182 Mich App 70, 83 (1990) (failure to comply with necessary court-ordered counseling may be one, though not the only, consideration in determining whether to terminate parental rights). Compare *In re Pasco,* 150 Mich App 816, 821 (1986) (a parent's almost complete failure to comply with the treatment plan and other strong evidence of a risk of harm to the child supported termination of parental rights).

Second decision: determine whether to initiate proceedings to terminate parental rights. MCR 3.976(E)(2) states:

> "(2) *Continuing Foster Care Pending Determination on Termination of Parental Rights*. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within which the petition must be filed, which may not be more than 42 days after the date of the order."

See also MCL 712A.19a(6), which contains substantially similar language.

There is no sanction for the failure to initiate termination proceedings within the requisite 42 days. *In re Kirkwood,* 187 Mich App 542, 545–46 (1991).

Third decision: determine whether to continue child's foster care placement for a limited period. MCR 3.976(E)(3) states:

> "(3) *Other Placement Plans.* If the court does not return the child to the parent, guardian, or legal custodian and if the agency demonstrates that termination of parental rights is not in the best interest of the child, the court must either
>
> > (a) continue the placement of the child in foster care for a limited period to be set by the court if the court determines that other permanent placement is not possible, or
> >
> > (b) place the child in foster care on a long-term basis if the court determines that it is in the child's best interests."

*As amended by 2004 PA 473, effective December 28, 2004.

MCL 712A.19a(7) contains substantially similar language to MCR 3.976(E)(3). However, MCL 712A.19a(7)(b) provides that the court may place a child in foster care on a long-term basis if it is in the child's best interest *based upon compelling reasons*.* MCR 3.976(E)(3) does not contain the compelling reasons requirement.

Other "planned permanent living arrangements." MCR 3.976(A)(5) provides that as an alternative to returning a child home, terminating parental rights, establishing a legal guardianship for the child, or permanently placing a child with a fit and willing relative, the court may order "another planned permanent living arrangement." However, the agency must document to the court "a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed [above]." *Id.* Similarly, regulations implementing the Adoption & Safe Families Act allow a court to order "another planned

permanent living arrangement" as an alternative to reunification, adoption, guardianship, or relative placement if it finds a "compelling reason" for the alternative. 45 CFR 1356.21(h)(3) states:

> "(3) If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:
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> > (*i*) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;
> >
> > (*ii*) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,
> >
> > (*iii*) the Tribe has identified another planned permanent living arrangement for the child."

17.6 Required Request for Termination of Parental Rights Under Federal Law

The federal Adoption & Safe Families Act requires that the state file or join in filing a petition requesting termination of parental rights in certain circumstances. Such a petition is required by 42 USC 675(5)(E) in the following circumstances:

- if a child has been in foster care for 15 of the last 22 months, and
- if a court has determined that a child has been abandoned or the parent has committed murder of another child of the parent; committed voluntary manslaughter of another child of the parent; aided or abetted, attempted, conspired, or solicited murder or voluntary manslaughter of another child of the parent; or committed felony assault resulting in serious bodily injury to the child or another child of the parent.

However, the state is not required to file or join in filing a petition for termination of parental rights if the child is in the care of a relative, a state agency has demonstrated a compelling reason why termination would not be

in the best interests of the child, or the state has not provided necessary services for family reunification (in cases where reasonable efforts to reunify the family must be made). *Id*.

The relevant implementing regulation, 45 CFR 1356.21(i), reiterates the statute but adds more detail. It states as follows:

> "(i) *Application of the requirements for filing a petition to terminate parental rights at [42 USC 675(5)(E)].*
>
> "(1) Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):
>
> (*i*) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:
>
> (A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at [42 USC 675(5)(F)] and § 1355.20 of this part;*
>
> (B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;
>
> (C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,
>
> (D) Need only apply [42 USC 675(5)(E)] to a child once if the State does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;
>
> (*ii*) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,
>
> (*iii*) Who has been convicted of one of the felonies listed at paragraph (b)(3)(*ii*) of this

*A child enters foster care on the earlier of the date that the court found a child to be abused or neglected or the date of the child's actual removal from his or her home. 45 CFR 1355.20(a).

section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

"(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(*i*) At the option of the State, the child is being cared for by a relative;

(*ii*) The State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

"(*iii*) The State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

"(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child."

*See Section 17.5, above.

A child's foster care caseworker may document a "compelling reason" not to file a petition for termination of parental rights and present it to the court at a permanency planning hearing. See DHS *Services Manual,* CFF 722-7. This may satisfy the requirement of MCL 712A.19a(7) and MCR 3.976(E)(2) that the agency demonstrate that termination of parental rights is clearly not in a child's best interests.*